

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review of)
Chapters 4901:1-9, 4901:1-10, 4901:1-21,) Case No. 06-653-EL-ORD
4901:1-22, 4901:1-23, 4901:1-24, and)
4901:1-25 of the Ohio Administrative Code.)

**APPLICATION FOR REHEARING
BY THE
OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES**

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December 5, 2008

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The Ohio Consumer and Environmental Advocates (collectively “OCEA”)¹ jointly submit this Application for Rehearing pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35(A) regarding the Finding and Order in the above-captioned case issued by the Public Utilities Commission of Ohio (“PUCO” or “Commission”) on November 5, 2008. OCEA members submit that the Commission’s Finding and Order (“Commission’s Order”) is unreasonable and unlawful in the following particulars:

The Commission’s order is unreasonable and unlawful because the Commission failed, as a quasi-legislative decision-maker, to formulate rules regarding electric service and safety standards (Chapter 4901:1-10) that serve the public policy embodied in recent legislation.

¹OCEA includes the Office of the Ohio Consumers’ Counsel, City of Toledo, Ohio Partners for Affordable Energy, Appalachian People’s Action Coalition, Citizens for Fair Utility Rates, Neighborhood Environmental Coalition, Cleveland Housing Network, Empowerment Center for Greater Cleveland, Counsel for Citizens Coalition, Citizen Power, Edgemont Neighborhood Coalition of Dayton, Interstate Renewable Energy Council, Northwest Ohio Aggregation Coalition, and The Sierra Club Ohio Chapter.

The Commission's order is unreasonable and unlawful because the Commission failed, as a quasi-legislative decision-maker, to formulate rules regarding electric interconnection standards (Chapter 4901:1-22) that serve the public policy embodied in recent legislation.

The Commission's order is unreasonable and unlawful because the Commission failed, as a quasi-legislative decision-maker, to formulate rules regarding the electric service provider enforcement provisions (Chapter 4901:1-23) that serve the public policy embodied in recent legislation.

The reasons for granting this Application for Rehearing are set forth in the attached Memorandum in Support.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING
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I. INTRODUCTION

The Ohio Consumer and Environmental Advocates (collectively “OCEA”) jointly submitted comments and reply comments regarding rules proposed in an Entry dated July 23, 2008. OCEA requested that the Public Utilities Commission of Ohio (“PUCO” or “Commission”) adopt the revisions to the proposed rules as set forth in those filings. OCEA’s filings emphasized the need for electric reliability standards that protect the public, assure the public that the rules are being followed and require appropriate and transparent reporting of compliance monitoring. OCEA members urge the Commission to reconsider its Order to keep in the forefront the public interest and the utilities’ duty to serve that interest in a fair and reasonable manner.

II. THE COMMISSION’S ORDER IS UNREASONABLE AND UNLAWFUL BECAUSE THE COMMISSION FAILED, AS A QUASI-LEGISLATIVE DECISION-MAKER, TO FORMULATE RULES REGARDING THE ELECTRIC SERVICE AND SAFETY STANDARDS (CHAPTER 4901:1-10) THAT SERVE THE PUBLIC POLICY EMBODIED IN RECENT LEGISLATION. *AMOCO v. PETRO. UNDERGR. STOR. TANK RELEASE COMP. BD.*, 89 OHIO ST.3D 477, 483.

A. The Commission’s Order Failed to Set Reasonable Specific Vegetation Management Guidelines that Require a Reasonable Minimum Level of Vegetation Management that All Electric Utilities Must Follow in Order to Guarantee the Same Level of Reliable Service to Ohio Ratepayers.

The existing provisions of Ohio Adm. Code 4901:1-10-27(E)(1)(f) require electric utilities to have programs for right of way vegetation control. However, the rule lacks any minimum requirements for the vegetation management programs. With the recent windstorm of September, 2008, as a backdrop, OCEA questions why the Commission did nothing in the Commission’s Order to require consistent vegetation management practices across all companies for trees both inside the right-of-way and outside of the right-of-way.

Customers routinely inquire about the standards that electric utilities use for tree-trimming and about responsibilities for removing debris. As reported by PUCO Staff,² tree-caused outages had the second greatest impact on the distribution system - yet there are no specific vegetation management rules in the Commission’s Order.

Some electric utilities continue to focus on “performance-based” vegetation management practices. However, many utilities still have a trimming cycle that is

² *In the Matter of the Settlement Agreement Between the Staff of the Public Utilities Commission of Ohio and Columbus Southern Power Company and Ohio Power Company*, Case No. 03-2570-EL-UNC and *In the Matter of the Self-Complaint of Columbus Southern Power Company and Ohio Power Company Concerning the Implementation of Programs to Enhance Their Currently Reasonable Level of Distribution Service Reliability*, Case No. 06-222-EL-SLF, Commission Ordered Investigative Report (April 17, 2006) at 14.

employed on a system-wide basis, or other application of vegetation management techniques, every so many years. There is some variability in the lengths of these cycles. In the FirstEnergy rate case, testimony in the evidentiary hearing by both FirstEnergy and PUCO Staff witnesses indicated that the Company's four-year cycle-based vegetation management program, in fact, was not a four-year cycle at all.³ The four-year tree-trimming cycle actually did not mean that the vegetation on a given circuit would be trimmed every four years.⁴ The fact that FirstEnergy failed to follow its vegetation management plan, which had been submitted to the Staff, was deemed not to be a violation of any commission rule according to both the company and the PUCO Staff. The plans, standing alone, are not enough. The Commission should require that vegetation management plans be followed and that consequences should attach for failure to follow the plans including forfeitures and other sanctions.

The use of a vegetation management policy that rations tree trimming and other vegetation management activities only to those distribution circuits that exhibit especially poor electric service reliability due to tree-related faults comes at a cost to overall system reliability. Minimizing tree trimming in this way leaves vegetation in close proximity to circuits, which also tends to increase the tree-related problems that occur during storms. For example, Columbus Southern Power Company and Ohio Power Company (collectively "AEP") recent reliability index performance during storms certainly suggests that increased storm response and service restoration capabilities may be needed

³ *In re the Application of FirstEnergy for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices and for Tariff Approvals*, Case No. 07-551-EL-AIR et al., ("FirstEnergy Rate Case"). Tr. Vol. VIII at 104 (February 22, 2008) (Lettrich).

⁴ Id.

as part of its performance-based program of vegetation management. Recent AEP policies to withhold tree-trimming from distribution circuits until they show negative reliability impacts due to tree contact will increase storm-related customer outages, as the effects of wind and ice increase due to infrequent tree-trimming. The windstorm of September 14, 2008, should increase the Commission's concerns and vigilance with respect to the vegetation management efforts of the utilities, particularly because the vegetation management efforts of the electric utilities vary.⁵ OCEA recommends that the Commission adopt specific vegetation management guidelines that all electric utilities must follow in order to guarantee the same level of reliable service to Ohio ratepayers. Clear standards can provide customers with the service they need and the ability to effectively hold utilities to those standards; if standards are understandable for customers, they can serve as the first line of defense against poor systems maintenance. OCEA attaches the New Jersey Bureau of Public Utilities' recently amended vegetation management rules to assist the Commission and its Staff in developing reasonable, effective vegetation management rules.⁶

⁵ In the Matter of the Application of the Southern Power Company for Approval of its Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets, Case No. 08-917-EL-SSO et. al., OCC Ex. 9 (OCC Interrogatory 3-50). (“To the extent the Company has not followed its vegetation management plan as filed with the PUCO, what are the reasons for deviation from the vegetation management plan and how has each deviation been communicated to the PUCO?”)

RESPONSE: “The Company has not deviated from the vegetation management plan because the plan is intended to change as circumstances warrant.”)

⁶ Attachment 1.

B. The Commission’s Order Failed to Adopt Rules that Require A Minimum Level of Service After Power Outages that should be Required to Protect Customers.

With respect to the customer-oriented performance standards submitted by OCEA in its initial comments⁷ OCEA continues to propose that the utility be required to provide credits to affected customers when the outage restoral has taken an unreasonable amount of time. It is not OCEA’s intention to “to burden the electric utilities with additional administrative oversight and more prescriptive performance requirements.”⁸ However, at a time when electric distribution system reliability in Ohio is deteriorating and electric utilities are demanding more revenue for their “aging” distribution systems, the Commission should be more inclined than ever to ensure that Ohioans are getting the service they pay for. The Commission asserts that OCEA provided no “support, justification or analysis” to back-up its original proposal.⁹ OCEA clarifies that its intent in its initial comments was two-fold:

- OCEA recommends that the utility be required to provide credits to affected customers when certain service interruption standards are not met so that customers who experience outages and whose service is not restored within a reasonable time or who suffer repetitive interruptions on the same circuit can obtain compensation for the poor performance of the utility. The utilities obtain revenues and rates that are designed to assure compliance with reasonable and adequate service. When service is not provided at levels required by the ESSS, customers should be credited a portion of their monthly charges.¹⁰
- OCEA recommends that the Commission adopt a concrete minimum level of service that should be expected by

⁷ OCEA Initial Comments at 60-62.

⁸ Commission’s Order at 12.

⁹ Id. at 13.

¹⁰ OCEA Initial Comment at 60.

customers, relating to the service restoration efforts of the electric utilities.

Accordingly, OCEA recommends the addition of sections (F), (G), and (H) to Ohio Adm. Code 4901:1-10-10:

- (F) IN ADDITION TO THE PERFORMANCE STANDARDS THAT REFLECT THE INDICES SET FORTH IN THIS RULE, IT IS AN UNACCEPTABLE LEVEL OF PERFORMANCE FOR AN ELECTRIC UTILITY TO FAIL TO MEET ANY OF THE FOLLOWING SERVICE INTERRUPTION STANDARDS:
1. CONSIDERING DATA DERIVED THROUGH THE AMALGAMATION OF DATA FROM ALL CONDITIONS, INCLUDING MAJOR EVENTS, AN ELECTRIC UTILITY SHALL RESTORE SERVICE WITHIN 36 HOURS TO NOT LESS THAN 90% OF ITS CUSTOMERS EXPERIENCING SERVICE INTERRUPTIONS.
 2. CONSIDERING DATA INCLUDING ONLY MAJOR EVENTS, AN ELECTRIC UTILITY SHALL RESTORE SERVICE WITHIN 60 HOURS TO NOT LESS THAN 90% OF ITS CUSTOMERS EXPERIENCING SERVICE INTERRUPTIONS.
 3. CONSIDERING DATA INCLUDING ONLY CONDITIONS THAT EXCLUDE MAJOR EVENTS, AN ELECTRIC UTILITY SHALL RESTORE SERVICE WITHIN 8 HOURS TO NOT LESS THAN 90% OF ITS CUSTOMERS EXPERIENCING SERVICE INTERRUPTIONS.
 4. CONSIDERING DATA DERIVED THROUGH THE AMALGAMATION OF DATA FROM ALL CONDITIONS, INCLUDING MAJOR EVENTS, AN ELECTRIC UTILITY SHALL NOT EXPERIENCE 5 OR MORE SAME CIRCUIT REPETITIVE INTERRUPTIONS IN A 12-MONTH PERIOD ON MORE THAN 5% OF ITS CIRCUITS.
- (G) FAILURE TO MEET A PERFORMANCE STANDARD FOR TWO CONSECUTIVE YEARS SHALL CONSTITUTE A VIOLATION OF THIS RULE. IN ADDITION TO FILING THE REMEDIAL ACTION PLAN AS REQUIRED IN (D) ABOVE,

THE PUCO STAFF SHALL ISSUE ITS FINDINGS AND PROPOSED ENFORCEMENT MEASURES WITHIN 60 DAYS OF ELECTRIC UTILITY'S ANNUAL RULE 26 FILING.

The current rules do not include any provisions for credits to customers if an electric utility, for reasons other than scheduled maintenance, caused the customer to have a sustained outage. Lack of electricity causes a major hardship on customers and electric utilities need to take all reasonable efforts to avoid customers being without service. While some sustained outages are unavoidable, proper inspection, maintenance and repair of distribution facilities can assist in avoiding service interruptions. Service interruptions that are momentary can also be minimized by proper management of vegetation in right-of ways. Credits for customers should be included within the rules by adopting the following paragraph:

- (H) AN ELECTRIC UTILITY SHALL CREDIT CUSTOMERS AN AMOUNT NOT LESS THAN \$25 PER DAY FOR EACH DAY THE CUSTOMER IS WITHOUT SERVICE AS A RESULT OF THE ELECTRIC UTILITY NOT TIMELY RESTORING SERVICE OR FOR SUSTAINED OUTAGES CAUSED BY LACK OF SUFFICIENT MAINTENANCE BY THE ELECTRIC UTILITY. CUSTOMERS SHALL BE CREDITED AN AMOUNT NOT LESS THAN THE MONTHLY CUSTOMER CHARGE FOR ANY MONTH IN WHICH MORE THAN THREE (3) MOMENTARY OUTAGES OCCUR AS A RESULT OF INADEQUATE VEGETATION MANAGEMENT BY THE ELECTRIC UTILITY.

C. The Commission's Order Eliminated the Momentary Average Interruption Frequency Index performance Measure That Served as a Valuable Indicator of Reliability for Customers.

The Commission should not eliminate power quality indices such as the Momentary Average Interruption Frequency Index ("MAIFI"). OCEA recommends that the Commission retain its reporting on MAIFI in Ohio Adm. Code 4901:1-10-11. The PUCO Staff stated in its Report in the AEP reliability case:

Momentary interruptions are becoming a nuisance to customers because devices such as computers, digital clocks, and electric motors with variable speed drives so sensitive to voltages fluctuations that, when a momentary interruption occurs, these products generally shutdown and need to be reset or restarted.¹¹

As noted by the PUCO Staff, the measurement and reporting of momentary interruptions is perhaps more important than ever for two reasons: because it serves as indicator of the status of an electric utility's vegetation management program; and, the need for power quality in order to attract high tech businesses and provide adequate service to small customers is of critical importance. OCEA has also provided a proposed definition for MAIFI within Ohio Adm. Code 4901:1-10-01:

MAIFI—MOMENTARY AVERAGE INTERRUPTION FREQUENCY INDEX—THE AVERAGE FREQUENCY OF MOMENTARY INTERRUPTIONS PER CUSTOMER OCCURRING DURING THE ANALYSIS PERIOD. IT IS CALCULATED BY DIVIDING THE TOTAL NUMBER OF MOMENTARY CUSTOMER INTERRUPTIONS BY THE TOTAL NUMBER OF CUSTOMERS SERVED.

AEP has also recently recognized the importance of momentary interruptions on customers as well as to AEP's overall reliability:

Q. HOW CAN AEP OHIO FURTHER IMPROVE ITS POWER QUALITY AND SERVICE RELIABILITY?

A. To further improve and modernize aging assets of its distribution system AEP Ohio's focus is on addressing the leading causes of momentary interruptions and sustained outages, which includes vegetation management, both in and out of rights-of-way, equipment failure and other specific factors that have the greatest negative impact on service reliability. Based on that information, AEP Ohio's Plan was developed to take aim at mitigating those negative impacts thus improving the customers' overall service

¹¹ *Staff Concerns and Recommendations About Columbus Southern Power Company And Ohio Power Company's Provision of Electric Service*, May 1, 2003.at 3 The report was filed in *In re the Commission's Consideration of a Settlement Agreement between the Staff of the Public Utilities Commission and Columbus Southern Power Company and Ohio Power Company*, Case No. 03-2570-EL-UNC, Motion for Acceptance of the Stipulation (December 31, 2003) ("AEP Reliability Case").

experience by reducing and/or eliminating momentary and sustained interruptions and in some cases providing quicker restoration of service when an interruption occurs.¹²

The digital technology that consumers have in their homes is more sensitive than analog technology to momentary outages.¹³ Additionally, because momentary outages are often a precursor to longer, more sustained outages, the Commission should increase its oversight of electric utilities MAIFI performance. MAIFI measurements should reflect the electric utility's level of service provided to all of its customers. Because a measurement for MAIFI currently exists in Ohio Adm. Code 4901:1-10-11(C)(5)(d), which deals with circuit reliability, there should be little to no cost for an electric utility to implement a standard for MAIFI. Vegetation management programs are also directly related as a cause of momentary service interruptions, which last five minutes or less.¹⁴

Commission Staff notes the effect of momentary outages in its 2003 Staff Report¹⁵ how circuit breakers and reclosers on overhead distribution circuits are designed to operate, i.e., open, when a fault is detected, and then to close after a few seconds, to see if the fault has cleared. If the fault is gone, the breaker or recloser stays closed, and customers downstream from that device will have experienced a momentary outage. If the fault is still there, the device opens again and typically locks out in the open position until the circuit can be checked for faults.¹⁶ Falling tree branches and tree limbs swaying in the breeze can cause faults that disappear after a second or two. When a customer or a

¹² Id, AEP Ex. 3 at 16-17 (Boyd).

¹³ Id. at 11.

¹⁴ Id. at 29

¹⁵ AEP Reliability Case, Staff Report (April 7, 2006) at 10.

¹⁶ Some circuit breakers or reclosers may be set to operate several times in this fashion before locking out.

distribution circuit experiences high numbers of momentary outages, trees are one of the most likely causes. Since the electric utilities, however, are not required to report numbers of momentary interruptions, a customer would most likely have to complain before the Company or the Commission became aware of the problem.

D. The Commission's Order Failed to Adopt Rules Providing for Transparency and Effective Communication regarding Enforcement and Compliance Efforts by the Commission.

The enforcement or compliance efforts that the PUCO Staff is undertaking regarding the performance of the electric utilities should be publicly available. OCC previously requested that Staff-issued notices of probable noncompliance be docketed in support of greater transparency regarding the Commission's public role.¹⁷ The after-the-fact availability of public records does not properly serve the public interest.

Neither the Commission nor the public benefit from the lack of insight and perspective when the information that drives an enforcement process is closed to everyone but the Commission Staff. Whether it's the tree-trimming practices of the electric utility or the frequency of momentary outages – the public is unable to evaluate the electric service they pay for. The PUCO Staff has made great strides in these proposed rules to increase the transparency of the Commission's process in setting electric utility performance standards. The newly developed public process for providing input into the development of the electric utilities' performance standards in Ohio Adm. Code 4901:1-10-10 should increase the public's faith in the electric distribution system. There is more that needs to be done, however, to make the public aware of the actual performance of the electric utility in addition to its *proposed* performance. Maintaining

¹⁷ *In the Matter of the Commission's Promulgation of Rules for Minimum Competitive Retail Electric Service Standards Pursuant to Chapter 4928, Revised Code*, Case No. 99-1611-EL-ORD, Finding and Order (April 6, 2000) at 36.

transparency throughout the implementation, reporting, and enforcement process is critical.

An example of the lack of transparency that exists in the current rules is the manner in which electric utilities are instructed to provide updated annual report information to the director of the Service Monitoring and Enforcement Division (“SMED”) and not to other parties. For example, pursuant to Ohio Adm. Code 4901:1-10-09(C)(1), electric utilities are required to report to the director of SMED if the minimum customer service levels are missed for any two months in a twelve-month period. Only SMED would have the information about the service even though it is the customer who would be the most impacted by any degradation in service.

The reliability performance of the electric utilities should be shared with the public that pays for electric service. For example, in late 2003, the public first became aware of Staff’s concerns about the performance of AEP in the AEP reliability case. In the AEP reliability case, the Company’s poor performance was longstanding and known to the PUCO and its Staff, long before the public was made aware of the issues. Public input into the benchmarks that were agreed to by the Company and the Staff would have greatly enhanced the process and likely would have provided more concrete benefits to consumers.

In the recent FirstEnergy rate case, it came to light that several of its operating companies had repeatedly failed to meet performance standards which were earlier agreed to by FirstEnergy’s operating companies and the PUCO Staff.¹⁸ Cleveland Electric Illuminating Company (“CEI”), for instance, had failed to meet its Customer

¹⁸ FirstEnergy Rate Case, Case No. 07-551-EL-AIR, et al., Staff Ex. 1 at 76 (CEI Staff Report).

Average Interruption Duration Index (“CAIDI”) targets for 8 years -- since the ESSS were originally implemented in 1999-2000. OE also failed to meet its Service Average Interruption Frequency Index (“SAIFI”) indices. These failures are all the more remarkable because the FirstEnergy Companies and the PUCO Staff are both entitled to a hearing before the Commission if the performance targets set for each operating company are unacceptable to either party. Also, if the action plan for improvement, filed after a FirstEnergy company fails to meet a target, is unacceptable to the PUCO Staff or the Company, a Commission hearing may be requested by either party. No such hearing has ever been requested by either the Commission Staff or FirstEnergy.

E. The Commission’s Order Failed to Adopt a Definition for “Major Event” that is Accessible to the Public, and Requires Public Utilities to Provide Pertinent Information to Its Customers.

Initially, OCEA notes that the inappropriate exclusion of outage data can be minimized if the Commission requires the electric utilities to formally notify the Commission when it has experienced what it believes to be a major event. By so doing, only the specific outage data associated with the event could be considered for exclusion for purposes of calculating reliability performance. Only after providing the Commission Staff with the report, the utility would be able to exclude the related outage data from its reliability calculations only upon approval of the Commission. The following outage data should be provided in support of the request:

- The starting and ending times of the outage;
- The main operating area(s) affected by the major event, including the causes and number of customers affected;
- The neighboring operating area(s) affected, including the causes and number of customers affected;

- The date and time of the first information of a service interruption; and
- The actual time that service was restored to the last affected customer.

OCEA does not agree with the Commission's adoption of the Staff's new definition for "major event."¹⁹ While AEP and FirstEnergy recommend in their initial comments that the Commission adopt the definition of "major event" proposed by the PUCO Staff, OCEA notes that the definition of "major event" proposed by the Staff in the second round of initial comments differed from the Staff-proposed definition proposed by Staff in the 2007 rulemaking. The Staff provided no rationale for the change even though it differs significantly from the definition proposed by Staff in the 2007 rulemaking in this case. As a general matter, OCEA opposes the adoption of definitions or standards that are not accessible to consumers. IEEE definitions and standards, as well as the rationale utilized in developing them, are only available by subscription or for a substantial fee.

Having a definition for "major events" in the rules is important and should lead to more consistent reporting by electric utilities and the collection of better more comparable reliability performance data. Outages have a significant effect on consumers and the electric utilities should do everything possible to reduce the occurrence of

¹⁹ The Commission initially adopted the following Staff and industry proposed definition: (Q) "Major event" encompasses any calendar day when an electric utility's system average interruption duration index (SAIDI) exceeds the major event day threshold using the methodology outlined in section 4.5 of standard 1366-2003 adopted by the institute of electric and electronics engineers (IEEE) in "IEEE Guide for Electric Power Distribution Reliability Indices." The threshold will be calculated by determining the SAIDI associated with adding 2.5 standard deviations to the average of the natural logarithms of the electric utility's daily SAIDI performance during the most recent five-year period. The computation for a major event requires the exclusion of transmission outages. For purposes of this definition, the SAIDI shall be determined in accordance with paragraph (C)(3)(e)(iii) of rule 4901:1-10-11 of the Administrative Code.

outages and to reduce the amount of time that consumers are without service when they do occur. Currently, the electric utilities use a variety of different definitions for major events that involve the duration of the outage, number of customers affected, and if additional resources are required to restore service. The definition adopted by the PUCO is, however, overly complicated and requires a statistician to determine when outages should be categorized as major events. Furthermore, neither the Staff nor the Commission have provided information that would allow a meaningful understanding about the impact of these proposed definitions.

The definition of “major event” recommended by OCEA, or some variation of it, is employed by many utilities and/or imposed by a number of state public utilities commissions.²⁰ OCEA is unaware of any state that employs the “2.5 beta methodology.” OCEA’s recommended definition fulfills all of the criteria outlined in IEEE Std. 1366 in determining a proper definition for major event:

- Definition must be understandable and easy to apply;
- Definition must be specific and calculated using the same process for all utilities;
- Must be fair to all utilities regardless of size, geography, or design; and
- Entities that adopt the methodology will calculate indices on a normalized basis for trending and reporting. They will further classify the major event days separately and report on those days through a separate process.²¹

²⁰ New York and Pennsylvania Commission use the “10%” standard recommended by the OCEA. Annex A, pages 23-25 of IEEE Std 1366-2003 contains a study performed in 1999 by the Edison Electric Institute that contains responses from 45 electric utilities. More than one-third of the respondents utilized a variation of the definition of “major event” recommended by the OCEA.

²¹ IEEE Std. 1366, Annex B, at 26.

OCEA's definition of "major event" is understandable to all stakeholders, including consumers. The IEEE definition is overly complicated and difficult to understand. Second, OCEA's definition of "major event" is specific and can be calculated by each utility using the same process. Third, the definition recommended by OCEA is fair to all electric utilities regardless of geography, size, or design. Fourth, the nature of the definition of "major event" recommended by OCEA does not require normalization because the electric utilities in Ohio are each relatively large in size, nor do they differ significantly in current levels of reliability.²² Finally, there is no information available to the public or reflected in the record of this proceeding that would allow for a consideration of the actual implications of the Staff's proposed definition on each electric utility's recent or future reliability performance.²³ In other words, there is no rationale or analysis that has accompanied this proposal from the Staff, and given that it would be "unique" in terms of what other states have adopted in this regard, the adoption of this overly complicated and unproven approach would not be appropriate.

²² FirstEnergy Initial Comments at 2.

²³ In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices and for Tariff Approvals, Case No. 07-551-EL-AIR et al. OCC Ex. 20 at 13 - 2007 Focused Assessment of the Cleveland Electric Illuminating Company. ("UMS Report"). "PUCO Staff analysis of potential pending rule changes to what constitutes an excludable event. The storm exclusion threshold may be increased from 6 percent of total customers to 10 percent of total customers, all outages less than 5 minutes (currently at one minute) may be excluded, and planned outages (previously excluded) may be included. Using 2006 as a baseline (strictly for comparative purposes), the net impact of these potential changes would have increased the Company's SAIFI performance by 0.1 and CAIDI performance by 45 minutes. The major contributor to these differences is adjusting the storm exclusion threshold to 10 percent of total customers (the approximate range for the 2.5 beta standard). Obviously, a more comprehensive analysis is called for (perhaps a 3-year average impact assessment); but, a dialogue around normalizing targets (or perhaps applying the new targets to smaller geographic areas) seems appropriate."

OCEA proposes that a definition for “major event” be adopted like Pennsylvania’s where the distinction is based on the severity of the outage across the service territory. OCEA reiterates its proposed definition for major event as follows:

MAJOR EVENT:

AN INTERRUPTION OF ELECTRIC SERVICE RESULTING FROM CONDITIONS BEYOND THE CONTROL OF THE ELECTRIC UTILITY WHICH AFFECTS AT LEAST 10% OF THE CUSTOMERS IN THE ELECTRIC UTILITY SERVICE TERRITORY DURING THE COURSE OF THE EVENT FOR A SUSTAINED DURATION OF 5 MINUTES OR LONGER. THE EVENT BEGINS WHEN NOTIFICATION OF THE FIRST INTERRUPTION IS RECEIVED AND ENDS WHEN SERVICE TO ALL CUSTOMERS AFFECTED BY THE EVENT IS RESTORED. THE NATURE AND SEVERITY OF THE WEATHER OR OTHER EVENTS THAT GIVES RISE TO THE LENGTHY OUTAGE SHALL BE REPORTED TO THE COMMISSION STAFF ON A MONTHLY BASIS.

III. THE COMMISSION’S ORDER IS UNREASONABLE AND UNLAWFUL BECAUSE THE COMMISSION FAILED, AS A QUASI-LEGISLATIVE DECISION-MAKER, TO FORMULATE RULES REGARDING ELECTRIC INTERCONNECTION STANDARDS (CHAPTER 4901:1-22) THAT SERVE THE PUBLIC POLICY EMBODIED IN RECENT LEGISLATION.

The Commission’s Order states that the Commission only accepted Staff’s limited changes to Ohio Adm. Code Chapter 4901:1-22 that were required by the passage of SB 221.²⁴ OCEA proposed only a few additional changes that the Commission should consider incorporating because the changes provide consistency throughout all the new rules or address critical customer response issues.

For example, the published rules should be as accurate as possible – to the best of the Commission’s knowledge. Ohio Adm. Code 4901:1-22-04(E)(1) references the

²⁴ Commission’s Order at 28.

definition of “self-generator” but incorrectly points to the wrong section of R.C. 4928.01(A) to find that definition. The definition of a “self-generator” can be found at R.C. 4928.01(A)(32) not R.C. 4928.01(A)(33). The distinction is minor but one that should not be knowingly ignored.

The other types of changes requested by OCEA to Ohio Adm. Code Chapter 4901:1-22 address critical company response time issues that should not be placed on the backburner by the Commission. For example, Ohio Adm. Code 4901:1-22 does not provide a time-frame for the processing of simple applications. The electric utilities should not be permitted to delay addressing applications for interconnection service and parallel operations for extended period of time for no reason and without an explanation.

Finally, customers and the Commission, should have the right to review an electric utility’s determination that the electric utility cannot connect the applicant’s facility within the stated time frames. Ohio Adm. Code 4901:1-22-04(B)(5)(c) should include a requirement for record retention and open records when an electric utility cannot meet the requirements of the rules. The rules should protect the customers and allows the Commission Staff the opportunity to review all such records – as discussed further below, Ohio Adm. Code 4901:1-22-04(B)(5)(c), as approved by the Commission, does not.

4901:1-22-04 General Provisions.

OCEA's modification to Ohio Adm. Code 4901:1-22-04(B)(3) places a limit on the amount of time a utility can take to process an application that is complete and requires no modifications.

PROPOSED RULE CHANGE:

(B) Application processing

(3) The ~~EDU~~ ELECTRIC UTILITY shall automatically provide each applicant with a written notice of the ~~EDU'S~~ ELECTRIC UTILITY'S receipt of an application within three business days after the application has been received. The notice of receipt shall include the following:

(b) A target date for processing the application. IN NO INSTANCE, SHALL THE TARGET DATE FOR PROCESSING THE APPLICATION EXCEED 30 DAYS IN CASES WHERE THE APPLICATION IS COMPLETE AND NO MODIFICATIONS ARE NEEDED. WHERE CHANGES ARE NEEDED, THE UTILITY SHALL INCLUDE TARGET DATES FOR COMMUNICATING THIS INFORMATION TO THIS APPLICANT.

OCEA also proposes to change Ohio Adm. Code 4901:1-22-04(B)(5)(c) which ensures that the PUCO has notification of any significant pattern of failure to approve applications for net metering, and that the public has the ability to access such records in order to determine whether real barriers to net metering and the purposes of S.B. 221 exist.

PROPOSED RULE CHANGE:

(B)(5)(c) AT THE END OF ANY CALENDAR MONTH DURING WHICH AN ELECTRIC UTILITY PROVIDES A NOTIFICATION TO AN APPLICANT UNDER SECTION 4901:1-22-04 (B)(5)(A) THE ELECTRIC

UTILITY SHALL PROVIDE A COPY OF EVERY SUCH NOTIFICATION TO THE PUCO. THE PUCO SHALL MAINTAIN A RECORD OF ALL SUCH APPLICATION REJECTIONS AVAILABLE FOR INSPECTION BY ANY INDIVIDUAL UPON REQUEST.

Ohio Adm. Code 4901:1-22-04(E) should be referencing R.C. 4928.01(A)(32) as opposed to its current reference of R.C. 4928.01(A)(33) .

PROPOSED RULE CHANGE:

- (E) Disposal of excess energy produced by the applicant's distributed generation.
 - (1) An applicant proposing to install a self-generator as defined in division (A)(33)(32) of section 4928.01 of the Revised Code for the purposes of selling excess electricity to retail electric service providers as a competitive service to the extent not preempted by federal law must first seek certification of managerial, technical and financial capability consistent with section 4928.08 of the Revised Code.

OCEA's proposed modification also places a limit on the amount of time a utility can take to supply customers with an estimate of the timetable and applicant's cost for construction or system upgrades.

PROPOSED RULE CHANGE:

- (F) Construction or system upgrades of the ~~EDU's~~ ELECTRIC UTILITY'S system.
 - (1) Where construction or system upgrades of the ~~EDU's~~ ELECTRIC UTILITY'S system are required by the applicant's installation of a distributed generation facility, the ~~EDU-ELECTRIC UTILITY~~ shall provide the applicant with an estimate of the timetable and the applicant's cost for the construction or system upgrades, consistent with the provisions of this chapter AND WITHIN 30 DAYS OF THE ORIGINAL INTERCONNECTION APPLICATION.

OCEA's proposed change to Ohio Adm. Code 4901:1-22-04(E) places a limit on the amount of time a utility can take to sign a contract with an applicant that notifies the utility to go ahead with construction or system upgrades.

PROPOSED RULE CHANGE:

- (F) Construction or system upgrades of the ~~EDU~~'s ELECTRIC UTILITY'S system.
 - (2) If the applicant desires to proceed with the construction or system upgrades, the applicant and ~~EDU~~ ELECTRIC UTILITY shall enter into a contract, WITHIN 14 DAYS OF THE APPLICANT'S NOTIFICATION, for the completion of the construction or system upgrades.

IV. THE COMMISSION'S ORDER IS UNREASONABLE AND UNLAWFUL BECAUSE THE COMMISSION FAILED, AS A QUASI-LEGISLATIVE DECISION-MAKER, TO FORMULATE RULES REGARDING ELECTRIC SERVICE PROVIDER ENFORCEMENT PROVISIONS (CHAPTER 4901:1-23) THAT SERVE THE PUBLIC POLICY EMBODIED IN RECENT LEGISLATION. AMOCO V. PETRO. UNDERGR. STOR. TANK RELEASE COMP. BD., 89 OHIO ST.3D 477, 483.

The Commission's procedure for investigations of a electric utility's or CRES provider's compliance with Ohio Administrative Code Chapters 4901:1-21 and/or 4901:1-10, should be a process that is open to all customers – and not exclusive to the electric utility, CRES provider, the PUCO Staff, and Commission. Many other parties have a right to know the facts – facts that will in many cases affect the outcome of the enforcement actions. The Commission's finding that the public's mistrust is unfounded because the Commission reviews the facts²⁵ fails to acknowledge the fact that the public's mistrust is due to the secrecy of *any* aspect of the process, by *every and any*

²⁵ Commission's Order at 28.

party including the Staff and the Commission. This is particularly true in situations where the Staff settles a case without full disclosure to the public of the facts or the reasons.

In addition, the Commission asserted in the entry that allowing public input and public review of the compliance process would hinder the Staff's review.²⁶ The Commission's position declares that the result is more important than the process – a proposition that OCEA does not agree with and is a clear rejection of creating a transparent process. Moreover, the Staff conducts investigations on a myriad of issues in which public disclosure has been part of the process, for example in rate cases. There is no evidence that public disclosure will in fact hamper the efforts of the Staff. For these reasons, the Commission's procedure for investigations of a electric utility's or CRES provider's compliance with Ohio Administrative Code Chapters 4901:1-21 and/or 4901:1-10, should be open and transparent with all interested parties having an opportunity to submit comments and contest the process if necessary. In order to facilitate those objectives, the rules should state:

Comments and Proposed Changes

4901:1-23-01 Purpose and Scope.

PROPOSED RULE CHANGE:

- (B) This chapter also governs customer service, reliability, and safety proceedings of the public utilities commission of Ohio to:
 - (1) Investigate and determine an electric utility's or competitive retail electric service provider's compliance with Chapters 4901:1-21 and /or 4901:1-10 of the Administrative Code and commission order issued thereunder

²⁶ Id.

- (2) PROVIDE FOR PUBLIC INPUT INTO THE INVESTIGATION OF AN ELECTRIC UTILITY'S OR COMPETITIVE RETAIL ELECTRIC SERVICE PROVIDER'S COMPLIANCE WITH CHAPTERS 4901:1-21 AND/OR 4901:1-10 OF THE ADMINISTRATIVE CODE AND COMMISSION ORDER ISSUED THEREUNDER

4901:1-23-02 Staff Notice of Probable Noncompliance, Proposed Corrective Action, and Proposed Forfeiture.

The Staff should not issue a notice of probable noncompliance or make recommendations regarding corrective action until after a public hearing is held. Moreover, the Staff's investigation should not be hidden from the public, especially not the customers of the utility or the CRES provider. For this reason, the proposed provisions under Rule 2 should be revised to state:

PROPOSED RULE CHANGE:

- (A) After an inspection, investigation, or complaint and A PUBLIC HEARING, a staff notice of probable noncompliance ~~may~~ SHALL be issued FILED. ~~The Staff notice of probable noncompliance may be issued~~ WITH A PROPOSED CORRECTIVE ACTION AND/OR PROPOSED FORFEITURE.
- (B) The staff ~~may issue~~ SHALL FILE an amended notice of probable noncompliance, proposed corrective action, or proposed forfeiture at any time prior to the commencement of a compliance proceeding or other commission proceeding brought pursuant to rule 4901:1-23-05 of the Administrative Code, in order to modify or include additional probable noncompliance or violations, facts, proposed forfeitures, and proposed compliance orders. Once the commission initiates a compliance or other proceeding pursuant to rule 4901:1-23-05 of the Administrative Code, this rule does not prevent the staff during the course of such proceeding, from seeking a finding of violations not listed in the staff notice or amended staff notice of probable noncompliance (or rescinding or refraining from seeking a finding of violations) or from seeking a corrective action or proposed forfeiture that varies from previous staff notices issued under this rule, provided that the staff's proposed findings and/or violations relate to the same incident,

type of incident, investigation, or audit(s). provided that the staff's proposed findings and/or violations relate to the same incident, type of incident, investigation, or audit(s) AND ARE FILED WITH THE COMMISSION.

4901:1-23-04 Settlement Agreements and Stipulations.

After an investigation that includes a public hearing, the Staff will be better equipped to reach a reasonable settlement agreement with the utility or the CRES provider. The Staff and the utility or the CRES provider could then file the settlement with the Commission for approval. If any party wishes to contest the settlement agreement, they could file comments with the Commission asking for an adjustment to the settlement agreement or to request a hearing. Then, in response to those comments, the Commission could approve, reject or modify the settlement agreement as it deems necessary. Accordingly, Rule 4 should be revised to state:

PROPOSED RULE CHANGE:

- (A) If staff and the electric utility or competitive retail electric service provider reach agreement regarding the violation of a rule within this chapter, or Chapters 4901:1-21 or 4901:1-10 or the Administrative Code, the violation of a commission order, a proposed corrective action or remedy, or the amount of a forfeiture or other payment, then the agreement must be reduced to writing in a settlement agreement. Such agreement shall be signed by an officer of the company or its attorney and the assistant attorney examiner who serves as legal counsel for the commission staff. Except as otherwise provided in paragraph (B) of this rule, the settlement agreement shall not be effective until ALL ~~both~~ of the following have occurred:
 - (1) The stipulation is filed with the commission for consideration pursuant to a compliance proceeding **ALONG WITH A REQUEST FOR COMMENTS ON THE STIPULATION;**
 - (2) **PARTIES HAVE A 30 DAY OPPORTUNITY TO FILE COMMENTS ON THE STIPULATION OR TO REQUEST A HEARING;**

- (23) The stipulation is EITHER approved by OR MODIFIED BY THE by the commission and made the order of the commission.

V. CONCLUSION

OCEA requests that the Commission carefully consider this Application for Rehearing along with the Initial Comments and Reply Comments previously submitted by OCEA members. The Commission should make changes to the rules stated in the November 5, 2008 Order as set out in this Application for Rehearing in order to protect the public interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Application for Rehearing has been served via First Class U.S. Mail, postage prepaid, to the following persons this 5^h day of December, 2008.

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